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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,902	04/16/2004	Terrance W. Sutherland	1013-00031	8903

7590

05/27/2005

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EXAMINER

GRAHAM, MARK S

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,902

Applicant(s)

SUTHERLAND ET AL

Examiner

Mark S. Graham

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/3/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Applicant's election with traverse of the bat in the response filed 5/9/05 is acknowledged. No reason is given for the traversal.

Therefore the requirement is still deemed proper and is therefore made FINAL.

Claims 17-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the response filed 5/9/05.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Snow. Snow's disclosed/claimed bat is inclusive of a polymer composite only bat. Regarding the method by which the bat is constructed recited in claims 2 and 15 such are considered product-by-process steps and are therefore met by virtue of the claimed article itself being anticipated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snow in view of Belanger et al. (Belanger). Snow discloses the claimed bat with the exception of specifying different fiber angles for different areas of the bat. However, as disclosed by Belanger it is known in the art to vary the fiber angle depending on the area of the bat. Varying such allows the ordinarily skilled artisan to control the flexibility, tensile, or hoop strength in a particular portion of the bat. Absent a showing of unexpected results, it would have been obvious to one of ordinary skill in the art to have varied Snow's fiber angles in the manner claimed by applicant to provide a bat particularly tailored to a particular batter's needs.

Regarding claims 10 and 11, absent a showing of unexpected results, the exact bending mode frequency and stiffness of the bat would have been up to one of ordinary skill in the art depending on a particular batter's needs.

Claims 13, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snow.

Regarding claims 13 and 14, absent a showing of unexpected results the exact thickness and percentage of fiberglass fibers of Snow's bat would have been up to one of ordinary skill in the art depending on the strength vs. flexibility characteristics desired in the bat.

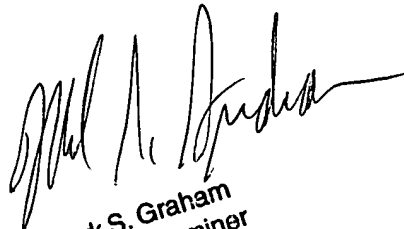
Concerning claim 16, the exact tolerances of Snow's bat would obviously have been up to the ordinarily skilled artisan depending on how fine a product one wished to produce vs. the cost in producing the product.

Vacek et al. has been cited for interest because it discloses a similar bat.

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Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
5/23/05



Mark S. Graham
Primary Examiner